

DALE M. FIOLA, SBN 76397  
Attorney at Law  
200 North Harbor Boulevard, Suite 217  
Anaheim, California 92805  
Fiolaw1@aol.com Email  
(714) 635-7888 Phone  
(714) 635-3323 Fax

Law Office of Mark Boling  
Mark Boling, SBN 101589  
maboling@earthlink.net  
21986 Cayuga Lane  
Lake Forest, CA 92630  
(949) 588-9222 Phone

Attorneys for Plaintiffs JASON N. NGUYEN and TAM NGUYEN,  
individually and on behalf of all other similarly situated employees

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

JASON N. NGUYEN and  
TAM NGUYEN,  
individually and on behalf  
of all other similarly  
situated employees,

Plaintiffs,  
vs.

IMPAC MORTGAGE,  
CORP. dba CASHCALL  
MORTGAGE and  
CASHCALL, INC.,  
Defendants.

CASE NO.:

**CLASS/COLLECTIVE ACTION**

COMPLAINT FOR DAMAGES,  
DECLARATORY & INJUNCTIVE RELIEF,  
RESCISSION AND RESTITUTION:

1. UNPAID OVERTIME WAGES  
(*LABOR CODE §§ 510 and 1194*);
2. INADEQUATE MEAL PERIODS  
(*LABOR CODE §§ 226.7, 512*);
3. UNLAWFUL DEDUCTIONS  
FROM WAGES EARNED (*LABOR  
CODE §§ 221-223, 400-410*);
4. UNFAIR COMPETITION  
VIOLATIONS (BUS. & PROF.  
CODE §§ 17200-17208);
5. FAIR LABOR STANDARDS ACT  
(*29 U.S.C. §§ 207(a), 216(b)*).

DEMAND FOR JURY TRIAL

1 Plaintiffs JASON N. NGUYEN (“JASON NGUYEN”) and TAM  
2 NGUYEN on behalf of themselves and all other similarly situated  
3 employees complains and alleges as follows:

4 **I. NATURE OF ACTION**

5 1. Plaintiffs are seeking an individual and collective claim  
6 against Defendants for unpaid overtime compensation and interest thereon  
7 under *29 U.S.C. §§ 207(a) and 216 (b)* of the Fair Labor Standards Act of  
8 1938 on behalf of Plaintiff and all other loan agents who are or have been  
9 employed by Defendants, and each of them, at their call centers located in  
10 Orange County and elsewhere in the State of California (“Call Centers”)  
11 during the relevant statute of limitations period for each claim. Plaintiffs  
12 also seek the recovery of costs, expert witness fees, and reasonable  
13 attorneys’ fees in accordance with *29 U.S.C. § 216(b)*.

14 2. Plaintiffs are seeking individual and class claims against  
15 Defendants for unpaid overtime compensation and interest thereon,  
16 compensation for missed meal and rest periods, compensation for unlawful  
17 deductions from earned wages, failure to report all earnings, injunctive,  
18 declaratory and other equitable relief, and reasonable attorneys’ fees and  
19 costs, under *Cal. Labor Code §§ 203, 218.5, 221-223, 226, 226.3, 226.7,*  
20 *400-410, 510, 512, 1194, and C.C.P. §1021.5* on behalf of Plaintiff and all  
21 other loan agents who are or have been employed by Defendants, and each  
22 of them, at their call centers located in Orange County and elsewhere in the  
23 State of California (“Call Centers”) during the relevant statute of  
24 limitations period for each claim.

25 3. Plaintiffs also seek declaratory relief invalidating Defendants’  
26 Acknowledgement Forms and injunctive relief and restitution of all  
27 benefits Defendants have enjoyed from their failure to pay overtime  
28 compensation, their failure to provide adequate meal and rest periods, and

1 their practice of making unlawful deductions from the wages of Plaintiffs  
2 and all other similarly situated employees, under *Cal. Business and*  
3 *Professions Code* 17200-17208 during the relevant statute of limitations  
4 period. Defendants' Employee Acknowledgement prevents and prohibits  
5 "concerted activity" by loan agents to seek mutual aid and protection  
6 through class, collective and representative actions in violation of Section  
7 7 of the National Labor Relations Act (NLRA) (29 *U.S.C.* § 158) and  
8 Section 8 by interfering with and restraining protected rights under the  
9 NLRA to engage in concerted action whereby groups of employees can  
10 engage in legal action to protect and preserve work-place rights.

## 11 **II. JURISDICTION**

12 4. This Court has original jurisdiction over Plaintiffs' individual  
13 and collective claims for unpaid overtime wages in violation of 29 *U.S.C.*  
14 §§ 207 (a) and 216 (b) of the Fair Labor Standards Act of 1938 under 28  
15 *U.S.C.* § 1331.

16 5. This Court has supplemental jurisdiction over Plaintiffs'  
17 individual and class state claims claims, which form part of the same case  
18 or controversy under Article III of the United States Constitution as  
19 Plaintiffs' federal claims herein under 28 *U.S.C.* § 1367 (a), which  
20 necessarily includes supplemental jurisdiction over:

21 a) Plaintiffs' claims for unpaid overtime wages under *Cal.*  
22 *Labor Code* §1194.

23 b) Plaintiffs' claims for penalties for failure to pay wages of  
24 discharged employees under *Cal. Labor Code* §203.

25 c) Plaintiffs' claims for meal period violations and unlawful  
26 deductions from wages due under *Cal. Labor Code* §218.

27 d) This Court has jurisdiction over Plaintiffs' claims for  
28 declaratory relief, injunctive relief and restitution of ill-gotten benefits

arising from Defendants' unfair, deceptive or unlawful business practices under *Cal. Business & Professions Code §§ 17203 and 17204*.

### III. VENUE

6. Venue as to each named Defendant is proper in this judicial district, pursuant to 28 *U.S.C.* § 1391 (b). Said Defendant(s), either maintains headquarters or other offices, transacts business, and/or has an agent in Orange County, California and Defendant is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiffs within the State of California and within Orange County. Defendants operate a few offices in Orange County within the State of California and employ numerous Class Members in Orange County. Plaintiffs JASON N. NGUYEN and JASON NGUYEN were employed as a loan agent by Defendants, and each of them, in Orange County, California.

### IV. PARTIES

#### A. *Plaintiff*

7. At all relevant times, Plaintiff JASON NGUYEN resided in Orange County, California. Plaintiff JASON NGUYEN was employed by Defendants, and each of them, as a consumer and mortgage loan agent in Defendants' Orange, California Call Centers.

8. Plaintiff JASON NGUYEN was employed with CashCall, Inc. ("CashCall"), located at 1 City Blvd., Orange, CA, as a consumer loan agent from approximately November 2011 to May 2013 and approximately December 2013 to October 2016. During the time period from approximately November 2011 to May 2013, Scott Roberts was Plaintiff JASON NGUYEN's direct supervisor at CashCall. During the time period from approximately December 2013 to November 2014, Corey Lehman was Plaintiff JASON NGUYEN's direct supervisor at CashCall. During

1 the time period from approximately November 2014 to October 2016,  
2 Rodderick “Roddie” Anderson was Plaintiff JASON NGUYEN’s direct  
3 supervisor at CashCall.

4 9. Plaintiff JASON NGUYEN was employed with CashCall  
5 Mortgage, a division of CashCall (“CashCall Mortgage”), located in  
6 Anaheim, CA, as a mortgage loan agent for approximately 6 – 7 months in  
7 and around mid to late 2013. During the time period from approximately  
8 May 2013 to December 2013, Kevin Knoyles was Plaintiff JASON  
9 NGUYEN’s direct supervisor at CashCall Mortgage.

10 10. When working back and forth between CashCall and  
11 CashCall Mortgage, Plaintiff JASON NGUYEN’s employer was CashCall,  
12 Inc.

13 11. Plaintiff JASON NGUYEN was employed with Impac  
14 Mortgage, Inc. dba CashCall Mortgage (“Impac”), located at 1 City Blvd.,  
15 Orange, CA, as a mortgage loan agent from approximately October 2016  
16 to January 2017. During the time period from approximately October  
17 2016 to November 2016, Aaron Vo was Plaintiff JASON NGUYEN’s  
18 direct supervisor at Impac. During the time period from approximately  
19 November 2016 to January 2017, Daniel Costa was Plaintiff JASON  
20 NGUYEN’s direct supervisor at Impac.

21 12. During the extent of Plaintiff JASON NGUYEN’s above-  
22 mentioned employment periods as a loan agent, he typically worked  
23 approximately 6-7 days a week averaging 10-13 hours of work a day from  
24 Monday through Friday plus weekends or 60 to 80 hours a week. Plaintiff  
25 JASON NGUYEN’s was not paid overtime or even straight time for hours  
26 he worked in excess of 50 hours a week and not paid statutory required  
27 wages for meal/rest break periods.

1           13. At all relevant times, Plaintiff TAM NGUYEN resided in  
2 Orange County, California. Plaintiff TAM NGUYEN was employed by  
3 Defendants, and each of them, as a mortgage loan agent in Defendants'  
4 Anaheim or Orange, California Call Centers.

5           14. Plaintiff TAM NGUYEN was employed with CashCall  
6 Mortgage, a division of CashCall, Inc. ("CashCall Mortgage"), located in  
7 Anaheim, CA, as a mortgage loan agent from approximately December  
8 2011 to August 2013. During the time period from approximately  
9 December 2011 to August 2013, Audi Gardner, Brooks Lamb and Miles  
10 Masters were Plaintiff TAM NGUYEN's direct supervisor(s) at CashCall  
11 Mortgage.

12           15. Plaintiff TAM NGUYEN was employed with Impac  
13 Mortgage, Inc. dba CashCall Mortgage ("Impac"), located at 1 City Blvd.,  
14 Orange, CA, as a mortgage loan agent from approximately February 2015  
15 to March 2017. During the time period from approximately February 2015  
16 to March 2017 Daniel Costa was Plaintiff TAM NGUYEN's direct  
17 supervisor at Impac.

18           16. During the extent of Plaintiff JASON NGUYEN's above-  
19 mentioned employment periods as a loan agent, he typically worked  
20 approximately 6-7 days a week averaging 10-13 hours of work a day from  
21 Monday through Friday plus weekends or 60 to 80 hours a week. Plaintiff  
22 TAM NGUYEN's was not paid overtime or even straight time for hours he  
23 worked in excess of 50 hours a week and not paid statutory required wages  
24 for meal/rest break periods.

25           17. Plaintiffs JASON NGUYEN and TAM NGUYEN were a  
26 putative class member of a class action lawsuit initially filed on May 20,  
27 2014 and dismissed without prejudice of class claims on January 13, 2017  
28 in the Orange County Superior Court of California entitled *Thanh Le v.*

1 *CashCall, Inc. et al.*, Case No. 30-2014-00724582-CU-OE-CXC, which  
2 alleges substantially similar claims and general set of operative facts  
3 against Defendants, and each of them.

4 ***B. Defendants***

5 18. Defendants CashCall and Impac are, and at all times  
6 mentioned herein were, organized and existing under the laws of the State  
7 of California with their principal place of business located in Orange  
8 County, California. Defendants, and each of them, are primarily engaged  
9 in the financial services business in California providing consumer loans,  
10 “pay day” loans or secured mortgages.

11 19. In 2015, CashCall Mortgage was acquired by Impac Mortgage  
12 Holdings Inc. (IMH), an Irvine, California-based mortgage originator  
13 founded in 1995. CashCall Mortgage continues to operate as a separate  
14 division of IMH under its original name as Impac Mortgage, Corp. dba  
15 CashCall Mortgage.

16 **V. FACTUAL BACKGROUND**

17 20. Defendants operate and, at all times during the liability  
18 period, have done business in Orange County and elsewhere within  
19 California. At the Orange Call Center and at its other Call Centers,  
20 Defendants have, among other things, originated, serviced, sold,  
21 transferred and assigned consumer loans, “payday” loans and secured  
22 mortgages. In the course of their employment with Defendants, Plaintiffs  
23 and all other similarly situated employees have pre-qualified borrowers,  
24 sold loans and processed applications.

25 21. The pattern, practices and policies that are complained of  
26 herein were enforced against in excess of 500 similarly situated loan  
27 agents employed at Defendants’ Orange County Call Center(s) and other  
28



1 Call Centers within the State of California during the relevant liability  
2 period.

3 22. Plaintiffs and all other similarly situated employees employed  
4 by Defendants worked more than 50 hours per week and were only paid  
5 overtime pay for 10 hours maximum. Additionally, if Plaintiffs and all  
6 other similarly situated employees were to clock-in incorrectly or there  
7 were any discrepancies about their time card or the hours they worked,  
8 they would be penalized and would be denied the 10 hours of overtime pay  
9 completely. Plaintiffs and all other similarly situated employees were  
10 instructed to clock out after 8-12 hours although they worked well beyond  
11 the designated 8-12 hours per day and if they did not clock out after 8-12  
12 hours of work, they were denied any overtime payment.

13 23. Plaintiffs and all other similarly situated employees are  
14 covered and/or has been covered by California Industrial Welfare  
15 Commission Occupational Wage Orders Nos. 4-2000 and 4-2001, 8 *Cal.*  
16 *Code of Reg.* §11040 (hereinafter collectively “Wage Orders”). These  
17 Wage Orders require employers to pay employees 1 ½ times their normal  
18 hourly rate for hours worked in excess of eight (8) per day and in excess of  
19 forty (40) per week, and at twice the normal hourly rate for hours worked  
20 in excess of twelve (12) per day and eight (8) on the seventh day worked in  
21 a work week. Defendants, at all times mentioned herein, intentionally  
22 failed to pay all overtime compensation earned by Plaintiffs and all other  
23 similarly situated employees and failed to obtain any agreement or consent  
24 to any fluctuating workweek (FWW) and to pay all overtime required for  
25 work performed in excess of 10 hours of overtime a week in order to avail  
26 themselves of the 29 *C.F.R.* § 778.114(a)..

27 24. At all relevant times, Plaintiffs and all other similarly situated  
28 employees have regularly worked in excess of five (5) hours a day without



1 being afforded a meal period of at least a half-hour in which they were  
2 relieved of all duties. Plaintiffs and all other similarly situated employees  
3 have also regularly worked at least ten (10) hours a day without receiving a  
4 second meal period of at least a half hour in which he was relieved of all  
5 duties. Plaintiffs and all other similarly situated employees have worked in  
6 excess of 4 hours a day without being provided a 10-minute rest period.  
7 Plaintiffs and all other similarly situated employees have worked an 8-hour  
8 work period without being provided at least a 20-minute rest period in the  
9 aggregate or two 10-minute rest periods. Defendants have known these  
10 facts and permitted, encouraged and/or required loan agents, including  
11 Plaintiff, to forego these meal and/or rest periods. Plaintiffs and all other  
12 similarly situated employees did not fall within any exemption to the meal  
13 or rest period requirements of the Labor Code and applicable wage orders.  
14 Plaintiff and loan agents were instructed to “clock out” at approximately  
15 11:00 or 12:00 for lunch but would not be permitted to take the actual  
16 lunch break until after 1:30 when funding closed for the day. When they  
17 finally took a lunch break, they continued to work and eat at their desk – a  
18 practice prohibited by Wage and Hour Regulations.

19 25. At all relevant times, Defendants have deducted sums earned  
20 by or due to Plaintiff and other similarly situated loan agents for many  
21 reasons, including, but not limited to, discrepancies in their time records or  
22 working in excess of 10 hours of overtime per week.

23 26. At all relevant times, Defendants have had a consistent policy  
24 and practice of: (1) permitting, encouraging, and/or requiring Plaintiffs and  
25 all other similarly situated employees to work in excess of eight (8) hours  
26 per day and in excess of forty (40) hours per week without paying them all  
27 overtime compensation as required by California state wage and hour laws;  
28 (2) permitting, encouraging, and/or requiring Plaintiffs and all other

1 similarly situated employees to work in excess of five (5) hours per day  
2 without taking an adequate meal period of at least one-half hour and to  
3 work in excess of ten (10) hours per day without taking a second adequate  
4 meal break of at least one-half hour; (3) making unlawful deductions from  
5 wages earned by or due to Plaintiffs and all other similarly situated  
6 employees (Industrial Welfare Order 4-2001 (“IWO”) 11(A) and (B); (4)  
7 willfully failing to pay all compensation owing (including unpaid  
8 overtime) in a prompt and timely manner to Plaintiffs and all other  
9 similarly situated employees; (5) willfully failing to comply with the  
10 following statutory provision: “Every employer shall, semimonthly or at  
11 the time of each payment of wages, furnish each of his or her employees,  
12 either as a detachable part of the check, draft, or voucher paying the  
13 employee's wages, or separately when wages are paid by personal check or  
14 cash, an accurate itemized statement in writing showing (1) gross wages  
15 earned, (2) total hours worked by the employee, etc;” (6) willfully failing  
16 to comply with IWO 4-2001(7)(A) (“every employer shall keep accurate  
17 information with respect to each employee including the following: ...(3)  
18 Time records showing when the employee begins and ends each work  
19 period. Meal periods, split shift intervals, and total daily hours worked  
20 shall also be recorded); (7) by willfully failing to relieve Plaintiffs and all  
21 other similarly situated employees of all duty during a 30-minute meal  
22 period away from their work stations (IWO 11(A)); and (8) by willfully  
23 failing to provide rest periods for Plaintiffs and all other similarly situated  
24 employees working longer than 3 ½ hours of at least a 10 minute rest  
25 period per every four (4) hours or major fraction thereof worked (IWO 12).

26 27. Plaintiffs and all other similarly situated employees were  
27 required to work 40 hours a week and were paid a base hourly rate of  
28 \$10.75 for those regular 40 hours a week, plus overtime of additional 10

1 hours a week at 1 ½ (1.5 x) times their regular rate of pay. In addition,  
2 Defendants had a bonus plan that would pay loan agents a bonus based  
3 upon a “tier” program of approximately 20 levels. Each level reached  
4 would result in an increase in their hourly pay. However, under threat of  
5 discipline, Plaintiffs and all other similarly situated employees were  
6 required to work in excess of 50 hours a week and, in many instances,  
7 Plaintiffs and all other similarly situated employees would work from 20-  
8 60 hours of overtime a week “off the clock;” hours that Defendants knew  
9 or should have Plaintiffs and all other similarly situated employees  
10 typically worked. The practice of Plaintiffs and all other similarly situated  
11 employees working “off the clock” was so well-known, long-standing,  
12 systemic and accepted at Defendants’ operations that some of Defendants’  
13 existing supervisors or managers at the time of Plaintiffs’ employment  
14 period, e.g., Scott Roberts, Daniel Reader, Matthew Faria, Don Johnson,  
15 and Johnny Vo, had worked off the clock when they had been in the  
16 position of a CashCall consumer loan agent. Plaintiffs and all other  
17 similarly situated employees were not required to record their time worked  
18 on the job, especially “off the clock” hours worked, but Defendants  
19 possessed Cisco System Time Steps or other computer data applications  
20 that noted loan agents log “time-ins” and “time-outs,” along with time  
21 records for transactions and notes in borrowers’ respective files, including  
22 Call logs and Computer Activities logs. Defendants had an explicit policy  
23 that they would not pay any overtime in excess of 10 hours a week and an  
24 unwritten policy that loan agents were to work as many hours beyond 10  
25 hours of overtime uncompensated. Loan agents never signed an alternate  
26 workweek agreement in compliance with Labor Code Sections 510 and  
27 511. In those cases where Plaintiffs and all other similarly situated  
28 employees reported working more than 10 hours of overtime on time

1 records in any given pay period, those loan agents would be counseled,  
2 warned or disciplined. However, as long as the loan agent did not report  
3 the “off the clock” hours worked, Defendants never disciplined,  
4 terminated, counseled or warning Plaintiffs and all other similarly situated  
5 employees essentially turning a “blind eye” to “off the clock” work, and  
6 intentionally developed a policy, practice or procedure for not leaving any  
7 physical or digital record of loan agents working “off the clock” so that  
8 management and Defendants could later claim ignorance as to the “off the  
9 clock” hours worked by Plaintiffs and all other similarly situated  
10 employees.

11 28. Defendants’ policy, pattern and practice was to subvert and  
12 circumvent the laws’ requirements that loan agents be paid all overtime  
13 worked in excess of 40 hours a week and 8 hours a day. In any event, loan  
14 agents followed an online script called “Methods,” processed loan  
15 applications on line, used an automated underwriting system to ascertain  
16 loan qualifications and which provided various loan packages and  
17 programs that loan agents were required to propose to prospective  
18 borrowers. Plaintiffs and all other similarly situated employees were  
19 entitled to be paid all overtime compensation under California’s wage and  
20 hour laws, including *Cal. Labor Code* §§ 510 and 1194.

21 29. At all relevant times, Defendants did not afford Plaintiffs and  
22 all other similarly situated employees proper meal periods, as required by  
23 *Cal. Labor Code* §§ 226.7 and 512, along with rest periods. Plaintiffs and  
24 all other similarly situated employees are owed an additional hour of pay at  
25 their regular rate for each day they did not take lawful meal or rest periods.

26 30. At all relevant times, Defendants have made a practice of  
27 deducting amounts from wages earned by or due to Plaintiffs and all other  
28 similarly situated employees in violation of *Cal. Labor Code* §§ 221-223

1 and 400-410. Plaintiffs and all other similarly situated employees are  
2 entitled to recovery of the unlawfully deducted wages.

3 31. Defendants have willfully failed and refused, and continue to  
4 fail and refuse, to timely pay wages due for overtime compensation to  
5 former loan agents, including Plaintiff, at the conclusion of their  
6 employment with Defendants, entitling these former loan agent employees  
7 to statutory penalties under *Cal. Labor Code* §§ 201-203.

8 32. On or about January 21, 2011, a class action was filed against  
9 CashCall, Inc. in the Orange County Superior Court, Complex Civil  
10 Center, entitled *Aaron Garcia v. CashCall, Inc., et al.* (“*Garcia*”) and  
11 assigned Case No. 30-2011-00443224 CU-OE-CXC, alleging unpaid  
12 wages and overtime wages, meal period premiums, failure to properly  
13 itemize wage statements, waiting time penalties, and unfair business  
14 practices. That complaint alleged violation of *Cal. Labor Code* §§ 200,  
15 201, 202, 203, 226(a), 510, Industrial Welfare Commission Wage Order 4-  
16 2001, and *Cal. Business and Professions Code* § 17200. The Class  
17 definition identifies “All current and former loan agents, loan  
18 representatives, and other current and former employees who performed  
19 the functions of loan agents and loan representatives [of CashCall, Inc.].  
20 (See ¶ 11, *Garcia* Complaint)

21 33. On information and belief, prior to January 21, 2011,  
22 Defendant CashCall, Inc. did not use a “CashCall Employee  
23 Acknowledgement Form” that prospective employees or new hires were  
24 required to sign in order to become employed with Defendant CashCall  
25 that required arbitration of all employment disputes, a jury trial waiver,  
26 required individual arbitration, prohibition of class arbitration, and a  
27 further prohibition that barred an employee from serving as a class  
28 representative.

1           34. On March 7, 2011, Defendant CashCall, Inc. filed its answer  
2 to the *Garcia* Class Complaint failing to identify any arbitration  
3 agreement, jury trial waiver or class representative bar in any affirmative  
4 defense.

5           35. During this time period, a similar class action was filed  
6 against Defendant CashCall, Inc. entitled *Carlo Smith v. CashCall, Inc.*  
7 (“*Smith*”) in the Orange County Superior Court and assigned Case No. 30-  
8 2011-00476023, also alleging class allegations for wage and hour  
9 violations.

10           36. On February 3, 2012, the Court consolidated *Smith* case with  
11 the *Garcia* case and made the *Garcia* case the lead case.

12           37. To reduce its exposure to class action litigation and avoid  
13 paying all overtime compensation and other benefits to its non-exempt  
14 employees, between January 21, 2011 and August 1, 2011, Defendant  
15 CashCall, Inc. required new hires to execute CashCall Employee  
16 Acknowledgement Forms, as a condition of employment, which required  
17 the employee to agree to the following:

18                   (i) That any dispute or controversy arising out of, relating  
19 to, or concerning employment shall be settled by arbitration to be held in  
20 Orange County, California, in accordance with the employment dispute  
21 resolution rules then in effect with JAMS;

22                   (ii) That CashCall, Inc. and the employee shall “each pay  
23 one-half of the costs and expenses of such arbitration, and each of us shall  
24 separately pay our counsel fees and expenses.”

25                   (iii) That the arbitration clause constitutes a waiver of the  
26 employee’s right to a jury trial;

27                   (iv) An acknowledgement as follows:  
28

1 “I UNDERSTAND AND AGREE THAT ALL DISPUTES  
2 INCLUDING ANY CLASS OR REPRESENTATIVE  
3 CLAIMS I MAY HAVE AGAINST CASHCALL, ITS  
4 OWNERS, MANAGERS, EMPLOYEES AND AGENTS  
5 SHALL BE RESOLVED BY BINDING ARBITRATION  
6 ONLY ON AN INDIVIDUAL BASIS. THEREFORE, THE  
7 ARBITRATOR SHALL NOT CONDUCT CLASS  
8 ARBITRATION; THAT IS, THE ARBITRATOR SHALL  
9 NOT ALLOW ME TO SERVE AS A REPRESENTATIVE,  
10 AS A PRIVATE ATTORNEY GENERAL, OR IN ANY  
11 OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN  
12 THE ARBITRATION.”

13 38. Paragraph 3 of the first generation of CashCall Employee  
14 Acknowledgement Forms were generated in mid-2011 and remained in  
15 effect until the fall of 2012. That form required the “Company and I shall  
16 each pay one-half of the costs and expenses of such arbitration, and each  
17 of us shall separately pay our counsel fees and expenses.”

18 39. The first generation of CashCall Employee Acknowledgement  
19 Forms came under fire in the litigation of *Orin Squires v. CashCall, Inc.*,  
20 filed in the Orange County Superior Court and assigned Case No. 30-  
21 2012-00577899. On September 6, 2012, Judge Kirk Nakamura struck  
22 down the CashCall Employee Acknowledgement Form relative to Squires  
23 finding that the “Agreement is procedurally unconscionable because it was  
24 made a condition of employment (citation omitted) and because it  
25 incorporates AAA rules that were not provided to the Plaintiff.” The Court  
26 further found that having the plaintiff to bear costs and attorney’s fees is  
27 unconscionable. Ultimately, the Court ruled, “the failure to eliminate the  
28 illegal cost-sharing provision from the Agreement evidences, when  
combined with other unconscionable elements, indicates “a systematic  
effort to impose arbitration on an employee not simply as an alternative to  
litigation, but as an inferior forum that works to the employer’s  
advantage.”



1           40. Between September 6, 2012 and October 29, 2012, Defendant  
2 CashCall created its second generation of CashCall Employee  
3 Acknowledgement Forms changing the cost sharing provision to reflect  
4 that “The Company will pay for all of the costs and expenses of such  
5 arbitration,” but refusing to budge on using JAMS knowing that the Court  
6 had just ruled that not providing a copy of JAMS rules and the limiting  
7 features of JAMS’ employment procedural rules created an impediment for  
8 a plaintiff employee to litigate in that forum and an unfair advantage to  
9 Defendant CashCall.

10           41. Plaintiffs lacks information and belief if they signed the  
11 CashCall Employee Acknowledgement form.

12           42. It was Defendant CashCall’s intent and conscious or reckless  
13 disregard of the law at the time of the changed policies and procedures and  
14 the implementation of the CashCall Employee Acknowledgement Form to  
15 circumvent the policies and law relative to non-exempt employees and the  
16 payment of overtime compensation by requiring new hires to surrender  
17 their rights to a jury trial in civil court and to act as a class representative  
18 in a civil suit, leaving each employee with only an individual claim in  
19 arbitration. The purpose of such changed policies and procedures was to  
20 avoid, directly or indirectly, paying full compensation due and owing to  
21 Plaintiff and all other similarly situated loan agents, by defeating future  
22 class litigation and fragmenting all claims into individual ones. The effect  
23 of such unlawful and surreptitious changed policies and procedures was to  
24 make it difficult, unfeasible or overly burdensome for an individual and  
25 groups of employees to bring an action for the claims set forth in this  
26 pleading, and each of them.

27           43. On or about March 24, 2010, the United States Department of  
28 Labor, Wage and Hour Division, issued Administrator’s Interpretation No.

2010-1 and concluded, “[b]ased upon a thorough analysis of the relevant factors, the Administrator has determined that mortgage loan officers who perform the typical duties described above have a primary duty of making sales for their employers, and, therefore, do not qualify as bona fide administrative employees exempt under Section 13(a)(1) of the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1).”

44. At the time Defendant CashCall, Inc. promulgated the changed policies and procedures, including the implementation of the CashCall Employee Acknowledgement Form, the administrative regulations treated mortgage loan officers and other loan officers as non-exempt. Defendant CashCall, Inc. knew or should have reasonably known this Administrative Interpretation No. 2010-1.

45. The changed policies and procedures, including the implementation of the CashCall Employee Acknowledgement Form, were used to violate the Fair Labor Standards Act, the California Labor Code and the DOL Administrative Interpretation No. 2010-1, as well as the public policies that support these enactments.

46. Given that the changed policies and procedures, including the implementation and the requirement that new hires sign the CashCall Employee Acknowledgement Forms as a condition of employment, the CashCall Employee Acknowledgement Form constitutes an unlawful contract in violation of *Cal. Civil Code* § 1667 (1) as “contrary to an express provision of law” and *Cal. Civil Code* § 1667 (2) as “contrary to the policy of express law, though not expressly prohibited.”

47. Additionally, the CashCall Employee Acknowledgement Form was such a contract, which had for its object, directly or indirectly, to exempt Defendant CashCall from responsibility for its willful injury to the person or property (wages) of another, and the violation of law, whether

1 willful or negligent, as against the policy of the law. See *Cal. Civil Code* §  
2 1668.

3 48. As part of Defendant CashCall's changed policies and  
4 procedures, Defendant CashCall presented the CashCall Employee  
5 Acknowledgement Form to new hires, failing to inform new hires of the  
6 substance of the Form as waiving a jury trial right, a civil action, and the  
7 right to act as a class representative in any employment dispute, including  
8 wage and hour violations. The Form was hidden in groups of papers that  
9 new hires were required to sign as part of the "employment documents"  
10 without providing the employees sufficient time to review the  
11 documentation or to provide them an opportunity to consult an attorney as  
12 to what they were signing, nor did Defendant CashCall provide any form  
13 of explanation as to the waivers and acknowledgement.

14 49. The CashCall Employee Acknowledgement Form was  
15 unlawful and procedurally and substantively unconscionable under *Cal.*  
16 *Civil Code* § 1670.5. As a result, the Acknowledgement Form is  
17 unenforceable. The CashCall Employee Acknowledgement Form violated  
18 Sections 7 and 8 of the NLRA by barring, prohibiting and preventing  
19 CashCall's loan agents from engaging in "concerted activity" to pursue  
20 legal action to protect their rights to mutual aid and protection as afforded  
21 under NLRA through waiver of those rights and then compelling  
22 CashCall's loan agents to "separate proceedings" by only permitting  
23 individual action in place and instead of class, collective and/or  
24 representative actions.

25 50. The CashCall Employee Acknowledgement Form allows  
26 CashCall's unlawful activity to hide behind the confidential nature of  
27 arbitration through JAMS, whose rules limits discovery and deposition.  
28 Under JAMS, Rule 17, absent an agreement by the parties to the contrary

1 or an order from the arbitrator, Plaintiff is only entitled to one deposition;  
2 whereas, there is no limitation on the number of depositions that can be  
3 taken at the Superior Court level and a 10-deposition limit at the Federal  
4 level. The limitation on the number of depositions works to the advantage  
5 of the Defendant who has better access to witnesses and documents;  
6 whereas, employees are required to take depositions to succeed with their  
7 wage and hour and discrimination cases. Leaving it up to the discretion of  
8 an arbitrator or agreement of the parties reduces Plaintiffs' equal access to  
9 discovery and investigation and cripples his chances of success based upon  
10 the inherent flaws in JAMS arbitration process in the context of proving  
11 his alleged claims.

12 51. Plaintiffs hereby give notice through the service of this  
13 complaint that if they had executed said CashCall Employee  
14 Acknowledgement Form, that they now rescinds the CashCall Employee  
15 Acknowledgement Form, and each term set forth therein, because it is  
16 unlawful, a violation of public policy, and procedurally and substantively  
17 unconscionable in accordance with *Cal. Civil Code* § 1689.

18 52. If Plaintiffs signed the CashCall Employee Acknowledgement  
19 Form, there is no clear and unmistakable evidence that Plaintiffs agreed to  
20 arbitrate all employment disputes, waiving their rights to a jury trial, civil  
21 trial, and to act as class representatives in a collective or class action.  
22 Plaintiff did not have a say in or participated in negotiating the CashCall  
23 Employee Acknowledgement Form. It was solely created by Defendant  
24 CashCall and its attorneys. There was no equal bargaining position or  
25 mutuality of the agreement. Thus, the Acknowledgement Form was an  
26 "adhesion contract."

27 53. The CashCall Employee Acknowledgement Form was a  
28 standardized contract that Plaintiffs had no ability to negotiate or adequate

1 time to review before signing. Defendant CashCall had a superior  
2 bargaining position.

3 **VI. CLASS ACTION ALLEGATIONS**

4 54. Plaintiffs hereby incorporates by reference each and every one  
5 of the preceding paragraphs above as though fully set forth herein.

6 55. Ascertainable Class: In addition to their individual state  
7 and federal claims, Plaintiffs bring their California state claims as a class  
8 action, on behalf of themselves and all other similarly situated CashCall,  
9 Inc.'s former and current loan agents, pursuant to *Federal Rules of Civil*  
10 *Procedure*, Rule 23(a), 23(b)(1), 23(b)(2), and 23(b)(3). Plaintiffs further  
11 bring their federal claims as a collective action in accordance with 29  
12 *U.S.C.* §216(b). The Class or collective action that Plaintiffs seek to  
13 represent is composed of and defined as follows:

14 “All persons who are employed or have been employed by  
15 Defendants as "Loan Consultants" or “Loan Agents” in the State of  
16 California at any time during the relevant statute of limitations  
17 period for each claim.” (L.R. 23-2.2(a))

18 56. Alternatively, Plaintiffs seek certification of any subclass of  
19 the above-mentioned claims, and each of them, during the applicable  
20 statute of limitations period, including but not limited to, a) each  
21 Defendant, b) each Plaintiff Class, subclass or team of loan agents, c) each  
22 claim, and/or d) a liability only class consisting of 1) each and/or every  
23 Plaintiff Class or subclass, 3) each claims and/or 3) each and every  
24 predominate common issue of fact and/or law, as deemed appropriate  
(collectively, “Plaintiff Subclasses”).

25 57. This action has been brought and may properly be maintained  
26 as a class action under *Federal Rules of Civil Procedure*, Rule 23 and  
27 *Central District Court Local Rules of Court 23-2* because there is a well-  
28 defined community of interest in the litigation and the proposed class is

1 easily ascertainable.

2 58. Numerosity: The exact number of members of the class,  
3 as hereinabove identified and described, is not known, but it is estimated  
4 that there are not less than 300-500 putative class members as similarly  
5 situated loan agents who worked at CashCall and Impac during the  
6 relevant statute of limitations period. The class is so numerous that joinder  
7 of individual members herein is impracticable.

8 59. Commonality: There are common questions of law and fact in  
9 the action that relate to and affect the rights of each member of the class  
10 and the relief sought is common to the entire class, namely the acts,  
11 representations and/or omissions of material facts by Defendants  
12 concerning the execution of the Employee Acknowledgement Form and  
13 the payment of wages, and other such issues alleged herein. The substance  
14 of these acts, representations and/or omissions of material fact,  
15 disseminated to and/or concealed from the class members, are common  
16 facts that violate, inter alia, the federal and state wage/hour laws as alleged  
17 herein. Questions of law or fact exist arising from the execution of the  
18 Employee Acknowledgement Form and the payment of wages. Such  
19 questions are common to all class members and predominate over any  
20 questions affecting only individual members of the class. The myriad of  
21 questions of law or fact common to the class includes, *inter alia*:

22 (a) Whether Defendants have policies, procedures and practices  
23 that are standardized and apply to all of its non-exempt California loan  
24 agent employees. Accordingly, all of the California Labor Code  
25 violations described below were uniform among each and every location  
26 in California. In other words, all of the California Labor Code violations  
27 were violated the exact same way.

28

1 (b) Whether Defendants' policies, practices or performance  
2 objectives required Plaintiffs and class members to work off the clock to  
3 meet performance objectives.

4 (c) Whether Defendants knew or should have known that  
5 Plaintiffs and class members were working off the clock.

6 (d) Whether Defendants violated California Industrial Welfare  
7 Order Nos. 4-98, and 4-2000, and/or 4-2001 and *Cal. Labor Code* §§ 510  
8 and 1194 by failing to pay overtime compensation to loan agents who  
9 worked in excess of 40 hours per week and/or eight (8) hours a day.

10 (e) Whether Defendants violated 29 *U.S.C.* § 207 (a) (1) by  
11 failing to pay overtime compensation for a workweek longer than forty  
12 hours .

13 (f) Whether Defendants violated *Cal. Business and Professions*  
14 *Code* §17200 by failing to pay overtime compensation to loan consultants  
15 who worked in excess of forty (40) hours per week and/or eight (8) hours  
16 a day.

17 (g) Whether Defendants violated California Industrial Welfare  
18 Order 4-2000 and/or 4-2001 and *Cal. Labor Code* §§ 226.7 and 512 by  
19 failing to afford loan agents proper meal and rest periods.

20 (h) Whether Defendants violated *Cal. Business and Professions*  
21 *Code* §17200 by failing to afford Plaintiffs and class members proper  
22 meal and rest periods.

23 (i) Whether Defendants violated *Cal. Labor Code* §§ 226, 226.3,  
24 and 1174 by failing to keep accurate records of Plaintiffs and class  
25 members' hours of work.

26 (j) Whether Defendants violated *Cal. Labor Code* §§ 221-223  
27 and 400-410 by making unlawful deductions from wages earned by or due  
28 to Plaintiffs and class members.



1 (k) Whether Defendants violated *Cal. Business and Professions*  
2 *Code* §17200 by making unlawful deductions from wages earned by or  
3 due to Plaintiffs and class members.

4 (l) Whether Defendants violated *Cal. Labor Code* §§ 201-203 by  
5 failing to pay overtime wages due and owing at the time that Plaintiffs  
6 and Class Members' employment with Defendants terminated.

7 (m) Whether Defendants violated *Cal. Business and Professions*  
8 *Code* §17200 by failing to pay overtime wages due and owing at the time  
9 that Plaintiffs and Class Members' employment with Defendants  
10 terminated.

11 (n) Whether Defendants violated by failing "provide" (i.e.,  
12 "authorize and permit") meal and rest periods as required by *Cal. Labor*  
13 *Code* §§ 226.7, 512, and 516.

14 (o) Whether Defendants violated *Cal. Business and Professions*  
15 *Code* §17200 by failing to "provide" meal and rest periods to Plaintiffs  
16 and Class Members' employment.

17 (p) Whether Defendants utilized a meal and rest break policy that  
18 violated the parameters of *Brinker Restaurant Group v. Superior Court*  
19 (2012) 53 Cal.4<sup>th</sup> 1004 by engaging in a policy of "rolling 5-hour rule"  
20 and/or requiring Plaintiffs and Class Members to work at their desks  
21 during rest and meal periods.

22 (q) Whether Defendants' policies or practices required Plaintiffs  
23 and class members to work more than four hours without a proper meal or  
24 rest break.

25 (r) Whether Defendants' Employee Acknowledgement Form is  
26 illegal, unconscionable and, therefore, unenforceable;

27 (s) Whether Plaintiffs and Class Members have been damaged  
28 and, if so, what is the proper measure of damages;

1 (t) Whether Defendants has been unjustly enriched as a result of  
2 its conduct alleged herein; and

3 (u) Whether Plaintiffs and Class Members are entitled to any  
4 equitable, injunctive and/or declaratory relief, and the scope of such relief.

5 (v) Whether Defendants' Employee Acknowledgement Form  
6 violated Sections 7 and 8 of the NLRA;

7 (w) Whether the Defendants' Employee Acknowledgement Form  
8 must be rescinded because it is illegal, unconscionable, and/or  
9 unenforceable, where consent cannot be given and thus any waiver of  
10 collective, class or representative actions are violated of Congressional  
11 intent and national policy underlying the NLRA.

12 60. Typicality: Plaintiffs' claims are typical of the claims of the  
13 Class. Plaintiffs and all other similarly situated employees worked  
14 uncompensated overtime, off the clock, which Defendants and its  
15 management knew or should have known of such policies and practices,  
16 when its management team had worked or previously worked for  
17 CashCall, Inc., which had been riddled by multiple class action and  
18 individual lawsuits for unpaid overtime and meal and rest periods.  
19 Plaintiff alleges that CashCall management were recruited to work for  
20 Impac. The policies and practices of CashCall, Inc. were followed and  
21 adhered to by Impac, using substantially similar compensation and tier  
22 bonus payment plans. Plaintiffs allege that CashCall, Inc. sold its  
23 mortgage lending business to IMH to "cleanse" its negative CashCall,  
24 Inc.'s reputation by creating a new company called Impac Mortgage, Corp.  
25 dba CashCall Mortgage that provided the same mortgage services that  
26 CashCall provided. Plaintiffs and all other similarly situated employees  
27 sustained injuries and damages arising out of and caused by Defendants'  
28 common course of conduct in violation of law as alleged herein.

1           61. Adequacy of Representation: Plaintiffs reside and were  
2 employed by Defendants, and each of them, in California at all relevant  
3 times, and is an adequate representative of the Plaintiff Class and/or  
4 Plaintiff Subclasses as he has no interests that are adverse to the interests  
5 of absent class members with respect to this action, or with respect to the  
6 claims for relief herein set forth.

7           62. The attorneys for Plaintiffs are experienced and capable in  
8 litigation in the field of wage and hour and class litigation and have  
9 successfully represented claimants in other litigation of this nature, and  
10 will actively conduct and be responsible for Plaintiffs' case herein.

11           63. Superiority of Class Action: A class action is maintainable  
12 and superior to other available methods for the fair and efficient  
13 adjudication of the controversy for the parties and the judicial system, in  
14 that:

15           (a) The costs of prosecuting the action individually will exceed  
16 the costs for prosecuting the case as a class action; class certification will  
17 obviate the necessity of multiplicity of claims;

18           (b) There is a desirability of concentrating the litigation of the  
19 claims and/or issues in this forum to protect California employees;

20           (c) Each Class Member has been damaged and is entitled to  
21 recovery by reason of Defendants' illegal policies and/or practices of  
22 permitting, encouraging, and/or requiring loan consultants to work in  
23 excess of forty (40) hours per week and/or eight (8) hours per day, without  
24 paying overtime compensation, failing to provide proper meal periods, and  
25 making unlawful deductions from wages..

26           (d) Unification of common questions of fact and law into a single  
27 adjudication by this court will reduce the likelihood and/or risk of  
28 inconsistent rulings, opinions, and decisions;

1 (e) Adjudications with respect to individual members of the class  
2 which would as a practical matter be dispositive of the interests of the  
3 other members not parties to the adjudications or substantially impair or  
4 impede their ability to protect their interests; and

5 (f) Class action treatment will permit a large number of similarly  
6 situated persons to prosecute their common claims and issues in a single  
7 forum simultaneously, efficiently, and without the unnecessary duplication  
8 of effort and expense that numerous individual actions would engender.

9 64. Plaintiffs further allege that a class action is superior for the  
10 fair and efficient adjudication of this dispute. Because of the nature of the  
11 misrepresentations, acts and/or omissions of material facts by Defendants  
12 concerning the Employee Acknowledgment Form and policies and  
13 procedures involving working of the clock, most loan agents will not  
14 realize they have a claim. A class action is therefore essential to prevent a  
15 failure of justice. Even if a loan agent did realize the existence of wage  
16 and hour claims against Defendants, the size of the claims involved does  
17 not warrant individual litigation of the magnitude and complexity  
18 necessary to challenge Defendants' unlawful conduct. Furthermore, as the  
19 damages suffered by each individual member of the class may be relatively  
20 small, the expenses and burden of individual litigation would make it  
21 difficult or impossible for individual members of the class to redress the  
22 wrongs done to them, while an important public interest will be served by  
23 addressing the matter as a class action. The cost to the court system of  
24 adjudication of such individualized litigation would be substantial.  
25 Individualized litigation would also present the potential for inconsistent  
26 or contradictory judgments.

27 65. Notice to Proposed Class Members: Plaintiffs are informed  
28 and believes that Defendants have computer access to a list of the names

1 and addresses of all class members who worked as loan agents and  
2 sufficient record keeping to determine the hours worked and not  
3 compensated for. The nature of notice to the proposed class contemplated  
4 will be through email and/or direct mailing to Defendants' lists of similarly  
5 situated loan agents, if available, internet website posting, and/or  
6 publication. Plaintiffs can contemplate that a third party administrator,  
7 such as CPT group or Rust Consulting, could be appointed to handle  
8 notice issues to class members. The costs of the third party administrator  
9 will be borne by Defendants, including any skip traces as to returned  
10 notices or no contact with certain class members.

11 66. Plaintiffs are unaware of any difficulties that are likely to be  
12 encountered in the management of this action that would preclude its  
13 maintenance as a class action. Unpaid wages and other damages or  
14 restitutionary relief may be made or disgorged into a fluid recovery fund  
15 and/or distributed to each class member by making a claim therefor.

16 **FIRST CLAIM**

17 **Unlawful Failure to Pay Required Overtime**

18 ***(Wage Orders 4-2000, 4-2001; Cal. Labor Code §§ 510 and 1194***  
19 ***against all Defendants)***

20 67. Plaintiffs hereby incorporate paragraphs 1 through 66 as  
21 though fully set forth herein.

22 68. By their failure to pay overtime compensation as alleged  
23 above, Defendants have violated and continue to violate the provisions of  
24 IWO 4-2000 and 4-2001 and *Cal. Labor Code* §§ 510 and 1194, which  
25 require overtime compensation to non-exempt employees.

26 69. By failing to keep accurate time records required by *Cal.*  
27 *Labor Code* §§ 226, 226.3, and 1174(d), IWO 7(A)(3), (4), (5), IWO 7(B),  
28 Defendants have made it difficult to calculate the overtime compensation

1 due Plaintiffs and all other similarly situated employees, although  
2 Plaintiffs are informed and believes that Defendants have time records of  
3 the actual time loan agents “timed-in” and “timed-out” and other records to  
4 show Defendants knew or should have known how many hours Plaintiffs  
5 and all other similarly situated employees actually worked during their  
6 entire employment period.

7 70. Plaintiffs request relief as described below.

8 **SECOND CLAIM**

9 **Unlawful Failure to Provide Adequate Meal Periods**

10 *(Cal. Labor Code §§ 226.7, 512; Wage Order No. 4-2000, 4-2001(11)*

11 *And (12) against all Defendants)*

12 71. Plaintiffs hereby incorporate by reference Paragraphs 1  
13 through 70 above as though fully set forth herein.

14 72. Plaintiffs and all other similarly situated employees regularly  
15 work in excess of five (5) and ten (10) hours a day without being afforded  
16 at least half-hour meal periods in which they were relieved of all duties, as  
17 required by *Cal. Labor Code* §§ 226.7 and 512 and Wage Order Nos. 4-  
18 2000, 4-2001 11(A).

19 73. Because Defendants failed to afford proper meal and rest  
20 periods, they are liable to Plaintiffs and all other similarly situated  
21 employees for one hour of additional pay at the regular rate of  
22 compensation for each workday that the proper meal periods were not  
23 provided, pursuant to *Cal. Labor Code* §226.7 and Wage Order No. 4-  
24 2001, Section 11(B).

25 74. Defendants failed to relieve Plaintiffs and all other similarly  
26 situated employees of all duty during the 30-minute meal period as  
27 required by IWO 11(A). Failure to relieve Plaintiffs and all other similarly  
28

1 situated employees of all duty shall be “considered an “on duty” meal  
2 period and counted as time worked.” IWO 11(A).

3 75. Plaintiffs and all other similarly situated employees worked  
4 without rest periods, as required by IWO (12) of a 10-minute rest period  
5 for every 4 hours worked, resulting in a total 20-minute rest period for an 8  
6 hour work shift. Defendants knew or reasonably should have known that  
7 Plaintiffs and all other similarly situated employees were working during  
8 the meal period, and, therefore, Defendants are liable for payment of  
9 Plaintiffs and all other similarly situated employees’ regular or overtime  
10 wage for that time worked.

11 76. Defendants failed to relieve Plaintiffs and all other similarly  
12 situated employees of all duty during the 10-minute rest period for every 4  
13 hours worked as required by IWO 12(A).

14 77. Plaintiffs and all other similarly situated employees are  
15 entitled to recover 1 hour of pay at the employee’s regular rate of  
16 compensation for each workday that the meal or rest period was not  
17 provided. *IWO 11(B) and 12(B), Cal. Labor Code § 226.7 (c).*

18 78. Plaintiffs request relief as described below.

19 **THIRD CLAIM**

20 **Unlawful Deductions from Wages Earned by Employees**  
21 **(*Cal. Labor Code §§ 221-223 and 400-410 against all Defendants*)**

22 79. Plaintiffs hereby incorporate by reference Paragraphs 1  
23 through 78 above as though fully set forth herein.

24 80. *Cal. Labor Code §§ 221-223 and 400-410* make it unlawful  
25 for an employer to make deductions from wages for business losses unless  
26 the employer can establish that the loss was caused by a dishonest or  
27 willful act, or by the culpable negligence of the employees.





1 unlawful activity prohibited by *Cal. Business and Professions Code*  
2 §17200.

3 86. As a result of their unlawful acts, Defendants have reaped and  
4 continue to reap unfair benefits and illegal profits at the expense of  
5 Plaintiffs and all other similarly situated employees. Defendants should be  
6 enjoined from this activity and made to disgorge these ill-gotten gains and  
7 restore to Plaintiff and all other similarly situated employees the  
8 wrongfully withheld wages, interest and/or related waiting time penalties,  
9 pursuant to *Cal. Business and Professions Code* §17203.

10 87. Plaintiffs request relief as described below.

11 **FIFTH CAUSE OF ACTION**

12 **Violation of Recordkeeping Requirements**

13 **(29 U.S.C. § 211(c), *Cal. Labor Code* §§ 226, 1174-1175 against all**  
14 **Defendants)**

15 88. Plaintiffs hereby incorporate by reference Paragraphs 1  
16 through 87 above as though fully set forth herein.

17 89. Plaintiffs bring this action on behalf of themselves and all  
18 other similarly situated aggrieved employees for Defendants' violation of  
19 29 U.S.C. § 211(c) and *Cal. Labor Code* §§ 226, 1174-1175, for failure to  
20 make and keep accurate records for Defendants' loan agents' wages, hours,  
21 and other conditions of employment.

22 90. 29 U.S.C. Section 211(c) (in part) provides: "Every employer  
23 subject to any provision of this Chapter or of any order issued under this  
24 Chapter shall make, keep, and preserved such records of the persons  
25 employed by him and of the wages, hours, and other conditions and  
26 practices of employment."

27 91. *Cal. Labor Code* § 226(a) provides in part: "Every employer  
28 ... shall furnish to his or her employee . . . an accurate itemized statement

1 in writing showing (1) gross wages earned, (2) total hours worked by the  
2 employee ...”

3 92. Plaintiffs and all other similarly situated aggrieved employees  
4 for Defendants worked “off the clock” with the knowledge of management  
5 in order to achieve performance objectives under Defendants’  
6 implemented Tier program that was utilized by CashCall and Impac.  
7 Defendants’ management knew or should have known, with reasonable  
8 investigation on its part, that loan agents were working off the clock and  
9 late at night in order to achieve Defendants’ production requirements,  
10 which could lead to disciplinary action including termination if not met.  
11 This knowledge is based on the facts that, inter alia, a) Defendants were  
12 aware of multiple class actions previously filed against CashCall alleging  
13 substantially similar wage/hour statutory violations based on substantially  
14 similar operations as Impac, b) Defendants’ team leaders worked off the  
15 clock when acting in the position of a CashCall loan agent, c) Defendants’  
16 team leaders had continual access to and reviewed loan agents’ timecard  
17 entries and activity records during the normal course of Defendants’  
18 business and d) CashCall transferred loan agents and management  
19 personnel to operate Impac.

20 93. Defendants through their management did not record the “off  
21 the clock” hours worked by Plaintiffs and all other similarly situated  
22 aggrieved employees and did so intentionally and willfully to avoid paying  
23 certain payroll taxes and overtime compensation to assure its competitive  
24 edge in the loan industry and realize increased profitability.

25 94. As a result of the failure of Defendants to comply with 29  
26 *U.S.C. § 211(c)* and *Cal. Labor Code §§ 226 (a), 1174 (d), 1174.5 and*  
27 *1175*, Plaintiffs request relief as described below.

28 **SIXTH CLAIM**

**Violation of Fair Labor Standards Act**

**(29 U.S.C. §§ 207(a) and 216(b) against all Defendants)**

95. Plaintiffs hereby incorporate by reference Paragraphs 1 through 94 above as though fully set forth herein.

96. Plaintiffs bring this individual and collective claim to recover overtime compensation, interest, liquidated damages, attorney's fees, and costs, under the provisions of Section 16 (b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §216 (b)), hereinafter referred to as the ACT.

97. Jurisdiction of this action is conferred on this court by Section 16(b) of the Act (29 U.S.C. §216(b)). Under Section 16 (b) of the ACT, an action for overtime compensation under Section 6 and 7 of the ACT.

98. As a proximate result of the violations of the FSLA, Plaintiffs seek the recovery of all unpaid overtime compensation, back pay, an equal amount of liquidated damages, injunctive relief, interest and attorney's fees pursuant to 29 U.S.C. §216 (b). Liquidated damages equal to the amount of the wages due must be awarded for FSLA violation unless the employer proves that it acted in good faith and had reasonable ground to believe its conduct did not violate FSLA. 29 U.S.C. §§ 216 (b) and 260.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and all other similarly situated employees requests the following relief:

A. That the Court determines that the federal claims alleged herein for violation of the FLSA, may be maintained as a collective action under 29 U.S.C. §216(b);

B. That the Court determines that each California state claim alleged herein, may be maintained as a class action under *F.R.C.P.* Rule 23;

1 C. That the Court declares that Defendants have violated the  
2 overtime provisions of 29 *U.S.C.* §207 (a) as to the Plaintiffs and all other  
3 similarly situated employees;

4 D. That the Court declares that Defendants have violated the  
5 overtime provisions of *Cal. Labor Code* §§ 510 and 1194 as to the  
6 Plaintiffs and all other similarly situated employees;

7 E. That the Court declares that Defendants have violated the  
8 record-keeping provisions of 29 *U.S.C.* § 211(c) and *Cal. Labor Code*  
9 §1174(d) and Section 7 of the Wage Orders as to Plaintiffs and all other  
10 similarly situated aggrieved employees;

11 F. That the Court declares that Defendants have violated *Cal.*  
12 *Labor Code* §§ 226.7, 512 by failing to afford Plaintiffs and all other  
13 similarly situated employees adequate meal periods;

14 G. That the Court declares that Defendants have violated *Cal.*  
15 *Labor Code* §§226.7, 512 and Wage Order Nos. 4-2001(12) by failing to  
16 afford Plaintiffs and all other similarly situated aggrieved employees of  
17 adequate rest periods;

18 H. That the Court declares that Defendants have violated *Cal.*  
19 *Labor Code* §§ 211-223 and 400-410 by making unlawful deductions from  
20 wages earned by or due to the Plaintiffs and all other similarly situated  
21 employees;

22 I. That the Court declares that Defendants have violated *Cal.*  
23 *Labor Code* §§ 201, 202 and 203 for willful failure to pay all  
24 compensation owed at the time of termination of employment to Plaintiffs  
25 and all other similarly situated employees;

26 J. That the Court declares that Defendants have violated *Cal.*  
27 *Business and Professions Code* §17200 by failing to pay Plaintiffs and all  
28 other similarly situated aggrieved employees overtime compensation, by

1 failing to keep proper time records, by failing to afford Plaintiffs and all  
2 other similarly situated aggrieved employees adequate meal and rest  
3 periods, by making unlawful deductions from Plaintiffs and all other  
4 similarly situated aggrieved employees' wages, by failing to keep accurate  
5 information with respect to each employee concerning "time records  
6 showing when the employee begins and ends each work period," "total  
7 hours worked in the payroll period," and by making this information  
8 readily available to the employee upon reasonable request. (IWO 7, 11,  
9 and 12);

10 K. That the Court declares that Defendants' violations as  
11 described above are found to have been willful;

12 L. That the Court award to Plaintiffs and all other similarly  
13 situated employees damages and/or restitution for the amount of unpaid  
14 overtime compensation, unpaid compensation for meal and rest periods  
15 and unlawful deductions, including interest thereon, liquidated damages  
16 and penalties, in an amount in excess of \$5,000,000, the exact amount to  
17 be ascertained at time of trial or default prove-up;

18 M. That Defendants further be enjoined to cease and desist from  
19 unfair, deceptive and unlawful activities in violation of *Cal. Business and*  
20 *Professions Code* § 17200;

21 N. That Plaintiffd be awarded reasonable attorneys' fees and  
22 costs pursuant to *Cal. Labor Code* §§ 218.5, 226 (3) (1) (a), 558, and 1194,  
23 *Cal. Code of Civil Procedure* §1021.5, under 29 *U.S.C.* § 216 (b,) and/or  
24 other applicable law;

25 O. An award to Plaintiffs and all other similarly situated  
26 employees of damages for the amount of unpaid overtime compensation,  
27 including interest thereon, liquidated damages, and penalties in accordance  
28

1 with 28 *U.S.C.* §216 (b) in an amount according to proof at trial, the exact  
2 amount to be ascertained at time of trial or default prove-up;

3 P. That the Court rescind, revoke, invalidate, and declare that  
4 Defendants' Employee Acknowledgement Forms in effect between  
5 January 21, 2011 through the present are unenforceable, illegal,  
6 unconscionable, and unlawful in violation of law or the public policy in  
7 support of the law;

8 Q. That the Court declare Defendants failed to make and keep  
9 accurate payroll records of hours worked by Plaintiffs and all other  
10 similarly situated employees as required by 29 *U.S.C.* § 211(c) and *Cal.*  
11 *Labor Code* §§ 226, 1174-1175;

12 R. As a result of the failure of Defendants to comply with 29  
13 *U.S.C.* § 211(c) and *Cal. Labor Code* §§ 226 (a), 1174 (d), 1174.5 and  
14 1175, Plaintiffd and all other similarly situated aggrieved employees seek  
15 the following relief:

- 16 1) That Plaintiffs and each similarly situated aggrieved  
17 employee be deemed to have suffered injury from the  
18 inaccurate records maintained by Defendants (*Cal. Labor*  
19 *Code* § 226 (e) (2) (B));
- 20 2) Plaintiffs seek injunctive relief to enjoin Defendants' policy  
21 or practice of ignoring "off the clock" work performed by  
22 current loan agents and not properly and accurately reporting  
23 hours worked;
- 24 3) Penalties of \$50 for initial pay period in which the violation  
25 occurred and \$100 per employee for each violation in a  
26 subsequent pay period not exceeding \$4,000; (*Cal. Labor*  
27 *Code* § 226 (e) (1) (a));

28



1           S.     That Plaintiffs and/or all other class/collective members be  
2 granted such other declaratory and/or further relief as the court may deem  
3 just and proper.

4  
5 DATED: March 24, 2017                   /s/ Dale M. Fiola  
6   DALE M. FIOLA  
7   Attorney for Plaintiff JASON N.  
8   NGUYEN, TAM NGUYEN and all  
9   other similarly situated employees

10  
11   **DEMAND FOR JURY TRIAL**

12           Plaintiffs hereby demand for themselves and similarly situated  
13 employees a trial by jury on all claims.

14 DATED: March 24, 2017                   /s/ Dale M. Fiola  
15   DALE M. FIOLA  
16   Attorney for Plaintiff JASON N.  
17   NGUYEN, TAM NGUYEN and all  
18   other similarly situated employees

19  
20  
21  
22  
23  
24  
25  
26  
27  
28